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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/521,308	03/09/2000	Bruce A. Fairman	50N3545/1309	2383

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EXAMINER	
BANANKHAH, MAJID A	
ART UNIT	PAPER NUMBER
2127	10

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.	Applicant(s)
09/521,308	Fairman et al.
Examiner	**Art Unit**
Majid Banankhah	2127

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Jan 28, 2003* .

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-42* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-42* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. This final office action in response to paper number 9, Amendment A, which was filed on January 28, 2003. Applicant's argument concerning the rejection of claims have been fully considered but they are not deemed to be persuasive. Claims 1-42 are presented for examination.

2. The text of those sections of Title 35, U.S. code not included in this office action can be found in a prior Office action.

3. Claims 1-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of prior U.S. Patent No. 6,453,376 ('376').

It is noted that the minor difference encompass replacement of the recitations of the limitations in the claims and it appears to be substantially the same or duplicate or in some instances obvious over one another. For example, claim 1, the three means of the claim in the instant application, i.e. "A resource characterization ...", "an allocation manager...", and "a processor coupled to ..." are exactly the same as the means in '376' Patent (see col. 10, lines 31-33, 42-44, and 57-58

respectively). In the newly amended claim 1, the recitation of limitation of "characterization including resource requirements required for executing said requested process is recited in claim 5 of the '376' Patent. In another words, claim 1 in the instant application are broader. One ordinary skill in the art would be motivated to use less sub-steps in order to expedite the process or method. In claim 1 of the present application, there is no recitation of "resource characterization set including a plurality of resource characterizations including a most mode, a best mode, and a worst mode", which implies that element and their functions has been omitted from the claim. That does not means the claims of the present application are not obvious because, deletion of a feature in prior art, with elimination of its function, is generally obvious. In re Wilson, 153 USPQ 740 (CCPA 1967).

4. Claims 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference Erickson et al. (U.S. Pat. No. 5,987,021) in view of D'Angelo et al. (U.S. Pat. No. 5,574,911).

Erickson et al. teaches of:

- resource characterization coupled to an electronic device (minimum level of resource for use in supporting request for that

service, col. 2, lines 23-25, also, (determining shared resource access, col. 1, lines 57-68, continued on col. 2, lines 1-8);

- an allocation manager to handle requested process (resource allocator, Fig.1 106, and , col. 3, lines 40-57, and Fig.3);

- a processor for controlling allocation manager (Fig.3, processor, element 108).

The reference of Erickson fails to explicitly teach of "the resource characterization include one or more resource listing and resource usage value that are required for an optimal performance". However, the reference of D'Angelo, in the same field of endeavor teaches of uses a method for controlling resource usage by network identities and by controlling usage by determining the amount of resource that is in use by a user and the amount that is requested (See col. 3, lines 53-67, the system of the present instant invention collects the particular constraint information germane to each device, also, col. 8, lines 54-68, the preferred embodiment uses a heuristic algorithm during each allocation phase, using the desired value for each resource). It would have been obvious for one ordinary skill in the art at the time the invention was made to use "controlling resource usage" of D'Angelo into "Dynamic allocation of resource"

of Erickson for the reason to have a control over the usage of the resource also in order to prevent network usage exceed assigned consumption quotas.

5. Applicant on page 5 of his remarks argue;

"In contrast, the present Application recites and claims only a single "resource characterization", as opposed to a "resource characterization set" that includes a "plurality of resource characterizations". Furthermore, the present Application nowhere claims or anywhere discloses the claimed "most mode", "best mode", or "worst mode" of the 376 patent. Applicants therefore submit that the present Application and the 376 reference are directed to substantially different subject matter, and therefore the present Application would not improperly extend the "right to exclude" others with regard to a single inventive concept."

In response, it is submitted that deletion of a feature in prior art, with elimination of its function, is generally obvious. See, In re Wilson, 153 USPQ 740 (CCPA 1967). Therefore, elimination of some features in the claim (such as, resource characterization set including a plurality of ...) does not make the claim non-obvious.

Later, on page applicant argue;

"Erickson essentially teaches reserving "communication resources" for the utilization of "non-queued" services. However, Applicants submit that the "resources" claimed and disclosed in Erickson are not analogous to those resources claimed and disclosed in the present Application. For example, Erickson discusses allocating "periodically repeating time slots, distinct carrier frequencies, orthogonal codes, etc." for use in wireless communication procedures (column 4, lines 48-50). In contrast, the resources referred to by Applicants refer to various system resource characteristics such as bus bandwidth, CPU processing capacity, or system memory capacity for optimally processing isochronous data (Specification, page 10, lines 7-11). Furthermore, Applicants submit that Erickson nowhere mentions or teaches "time-critical isochronous data" that is manipulated by a requested isochronous process, as claimed by

Applicants.

In addition, Applicants submit that Erickson nowhere discloses or teaches Applicants' claimed "resource characterization" which is alternately referred to in the Applicants' Specification as a "cantaloupe" (page 8, lines 25-28). Furthermore, Erickson nowhere discloses comparing resource values from a "cantaloupe" with currently available system resources to determine whether to "authorize or deny" a particular isochronous process, as claimed by Applicants. For at least the foregoing reasons, Applicants respectfully submit that all elements of their claimed invention are not identically disclosed or taught by Erickson.".

In response, first it is submitted that the independent claim is directed to "utilization of resource", "resource characterization", and "allocation manager", but the step and means of the independent claims are not affected by the specifics of the resources. Additionally, CPU time is also periodic repeating time slot. Regarding the argument of "Cantaloupe", it is submitted that, according to the definition in the specification, page 11, lines 16-23, "cantaloupe" is a two dimensional array of descriptive parameter, where the first parameter may be the type of resource and the second one the amount of required resource. The reference of Erickson, not only teaches of the resource group, but also teaches of the amount of resource as well (See, col. 2, lines 66-67, continued on col. 3, lines 1-23, and maximum usage efficiency). Additionally, D'Angelo, also clearly teaches of different types of resource and the amount of usage of resource (col. 7, lines 48-54 [resource types], and col. 8, lines 54-68, continued on col. 9, lines 1-6

[desired value for each resource]).

On page 9, applicant argue;

"Applicants respectfully traverse the Examiner's assertion that modification of the device of Erickson according to the teachings of D'Angelo would produce the claimed invention. Applicants submit that Erickson in combination with D'Angelo fail to teach a substantial number of the claimed elements of the present invention. Furthermore, Applicants also submit that neither Erickson nor D'Angelo contain teachings for combining the cited references to produce the Applicants' claimed invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C °103 are improper. The Examiner concedes that Erickson fails to teach that Applicants' claimed "resource characterization include one or more resource listing and resource usage value that are required for an optimal performance". Applicants concur. The Examiner then points to D'Angelo to purportedly remedy this defect."

In response, Examiner respectfully disagree. As noted by the Court of Customs and Patent Appeals, "argument cannot take the place of evidence." In re Langer, 503 F.2d 1380, 1395, 183 USPQ 288, 299 (CCPA 1974). In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). Applicants have not submitted sufficient evidence to rebut the strong prima facie case of obviousness established by Examiner. The motivation in the prior art to combine references does not have to be identical to that of the applicant to establish obviousness. In re Dillon, 919 F2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990). Additionally, the conclusions of obviousness may be made from common knowledge and common sense without any specific hint or suggestion in a particular reference. **In re Bozek,** 416 F.2d 1385, 163 USPQ 545 (CCPA 1969).

On page 10 Applicant argue;

"In contrast, Applicants teach and claim a "resource characterization that includes one or more resource listings and one or more corresponding resource usage values that are required for an optimal performance of said requested process." Furthermore, Applicants teach and claims that "said requested process executes with optimal performance due to guaranteed pre-allocated resources." For at least the foregoing reasons, Applicants submit that D'Angelo teaches away from Applicants' invention. A prior art reference which teaches away from the presently claimed invention is "strong evidence of nonobviousness." In re Hedges, 783 F.2d 1038, 228 U.S.P.Q. 2d 685 (Fed.Cir. 1987)."

In response, it is submitted that, the reference of D'Angelo teaches of optimizing computing resource in several places including, col. 3, lines 53-56, col. 4, lines 59-65.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE The application has been amended as follows: ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8 Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Maid A. Banankhah** whose voice telephone number is **(703) 308-6903**. A voice mail service is also available at this number.

All response sent to U.S. Mail should be mailed to:

Commissioner of Patent and Trademarks

Washington, D.C. 20231

Hand-delivered responses should be brought to Crystal Park Two, 2021 Crystal Drive, Arlington. VA, Six Floor (Receptionist). All hand-delivered responses will be handled and entered by the docketing personnel. Please do not hand deliver responses to the Examiner.

All Formal or Official Faxes must be signed and sent to either (703) 308-9051 or (703) 308-9052. Official faxes will be handled and entered by the docketing personnel. The date of entry will correspond to the actual FAX reception date unless that date is a Saturday, Sunday, or a Federal Holiday within the District of Columbia, in which case the official date of receipt will be the next business day. The application file will be promptly forwarded to the Examiner unless the application file must be

sent to another area of the office, e.g., Finance Division for fee charging, etc.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 305-9600**.

Maid Banankhah

April 3, 2003

MAJID A. BANANKHAH
PRIMARY EXAMINER